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## Appendix C

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### Land Use Regulation Commission's Lake Management Program

In June of 1990, the Land Use Regulation Commission amended its 1983 *Comprehensive Land Use Plan* by adopting a document entitled, *Amendment of the Comprehensive Land Use Plan Regarding the Development and Conservation of Lakes in Maine's Unorganized Areas*. Concurrently, it adopted changes to its *Land Use Districts and Standards* which implemented several components of the comprehensive lake management program presented in the *Plan Amendment*.

Major features of the Commission's 1990 lake management program are reflected in the Water Resources section of this Plan, but some of the background information and other important details were too lengthy to include in the body of this plan. Because of the importance of this planning effort, the entire text of the original *Amendment* is reproduced here with appropriate changes to update the text. The Commission reaffirms its commitment to its lake management program as summarized in the Water Resources section and detailed below, and it will continue to follow the guidance provided below in managing the lake resources in its jurisdiction.

#### I. Purpose of Amendment

This amendment to the Comprehensive Land Use Plan incorporated two major planning initiatives undertaken by the Commission - the Wildland Lakes Assessment and Lakes Action Program - as well as more current information regarding the relationship between land use and water quality.

#### II. Lake Issues

The unorganized territories are host to a wealth of lake resources unparalleled in most regions of the nation. These lakes have long been a magnet for sportsmen and outdoor enthusiasts. In recent years, demand for recreational property has grown substantially throughout the northeastern United States. Land costs along Maine's coast have increased dramatically and lake-front properties in areas near population centers have in many cases become saturated with recreational camp development. Seeking both affordable property and a less crowded atmosphere, many people desiring to purchase waterfront property have turned their attention to the recreational opportunities offered by lakes in Maine's unorganized territories.

The current demand for development on lake shorelands within Maine's unorganized areas is unprecedented. At virtually every Commission meeting, the Commission considers one or more issues relating to lakes and lake shorelands. Typical development proposals include those for new residences or additions to existing structures, docks and related recreational facilities, subdivisions, and roads. All told, between 1986 and 1988, approximately one-third of all building and development permit applications within the jurisdiction involved lakes. Subdivision applications appear to be even more heavily weighted toward lakes; upwards of fifty percent of all subdivision applications over the past three years involved areas adjacent to lakes. With its expansion both in volume and distribution, lakeshore development has significant potential to affect important natural values, timber harvesting, and traditional uses associated with lakes, such as sporting camps, in the unorganized territories.

While there seems to be interest in shoreland development on lakes throughout the jurisdiction, there is a trend toward development on medium- to large-sized lakes located near organized townships. In the early 1980's, development attention focuses on three main areas: the Rangeley Lakes, the Moosehead Lake region, and the Pemadumcook/Twin Lakes region. In northern Maine, interest in camp development is also evident in the Square, Cross, and Long Lakes region.

While some of the development proposals brought before the Commission are straightforward and non-controversial, an increasing number involve issues that are not easily resolved. Difficult issues that continually confront the Commission include:

- Camp development on undeveloped lakes;
- Increased vehicle access to undeveloped, backcountry lakes;
- Subdivision development on larger lakes with significant natural, scenic, and recreational values;
- Protection of significant natural resource features outside of designated protection zones;
- Continued development on heavily developed lakes or on lakes with potential water quality problems; and
- Development of private recreational facilities such as docks and access roads where these already exist at other locations on the lake.

The Commission has at its disposal a variety of tools that can be used to regulate use of lake shorelands. These include protective zoning for sensitive areas and code requirements governing setbacks, road construction, timber harvesting, and subdivision of land. While these tools have proved sufficient to manage individual developments, they do not provide the means to effectively plan for the future of these lakes.

Due in part to their numbers, and in part to their remote locations, little information has been available for most lakes in the unorganized territories. This lack of information, and the inadequacy of the existing regulatory framework to deal wisely and comprehensively with lakeshore development, was noted in the 1983 Comprehensive Plan. In fact, the plan highlighted lake protection issues as needing further consideration.

The Commission has always made a special effort to provide for shoreland development while maintaining protection of significant natural values. Nonetheless, in the mid-1980s, faced with the increasing demand for lakefront property, the Commission acknowledged the danger that, even with minimum standards, lakes in its jurisdiction might, by attrition, lose the very character that makes them so unique. In evaluating its lake management goals, the Commission identified five basic needs: 1) the need for additional protection for lakes with exceptional values; 2) the need for a mechanism to guide lakeshore development toward lakes best suited to accommodate it; 3) the need for consistent, reliable, and readily accessible natural resource and land use information; 4) the need for a clearly stated lakes policy; and, 5) the need for a coordinated program to implement this policy.

The Maine Wildlands Lake Assessment and Lakes Action Program were initiated to meet these needs. In undertaking these initiatives, the Commission acknowledged that it had not yet "fulfilled all of its responsibilities to assure that the public interest in these unusual resources is protected" (Maine Wildland Lakes Assessment Work Plan, 1986).

### III. Summary of Lake Planning Efforts

#### A. Wildland Lakes Assessment

The Maine Wildland Lakes Assessment was initiated in 1986 to establish a systematic base of natural resource and land use information on all lakes within the Commission's jurisdiction. The study considered all lakes with a surface area of ten acres or more. Approximately 1500 lakes met this size requirement. Smaller lakes were added when these were found to possess especially noteworthy natural resource values.

Based on methods presented in the Maine Wildland Lakes Assessment Work Plan, information was collected on the following natural resources:

- Fisheries
- Scenic quality
- Botanic features
- Physical resource
- Wildlife
- Shoreline character
- Cultural resources

Lakes that possessed "significant" or "outstanding" resource values in any of these areas were identified, and each lake was placed into one of the following four resource classifications based on its cumulative resource significance:

- Lakes of statewide significance with multiple outstanding natural values, categorized as Resource Class 1A (114 lakes);
- Lakes of statewide significance with a single outstanding natural value, categorized as Resource Class 1B (211 lakes);
- Lakes of regional significance (one or more significant ratings), categorized as Resource Class 2 (577 lakes);
- Lakes of local or unknown significance, categorized as Resource Class 3 (627 lakes).

The study also collected information pertaining to land and water uses, including:

- Access
- Zoning
- Water level fluctuation
- Proximity to services
- Shoreline development
- Ownership
- Public water supply

The completion of the Assessment in June of 1987, served only to highlight the need for further action – to develop measures to protect exceptional resource values associated with lakes and to guide development to the most appropriate areas.

#### **B. Lakes Action Program**

Following completion of the Wildland Lakes Assessment, the Commission appointed a Lakes Policy Committee. The committee, which included representatives from major landowners, statewide environmental and sportsmen's organizations, the University of Maine, and the Commission, was charged to:

- 1) Develop a proposal for a policy that might guide future Commission lake management decisions, and
- 2) Identify specific actions that should be taken to implement this proposed policy.

The actions identified by the committee were ultimately consolidated into a proposed lake action program. Public meetings were held in the fall of 1988 to discuss the proposal. *An Action Program for Management of Lakes in Maine's Unorganized Areas* was accepted by the Land Use Regulation Commission in January of 1989.

The Lakes Policy Committee sought a balanced approach to lake conservation and development, and recommended to the Commission a variety of innovative regulatory and non-regulatory lake management techniques, including policy guidance, special review criteria for lake development, lake concept plans, lake management classifications, and other public and private efforts.

#### **C. Other Initiatives**

The Commission has recognized the need to update its approach to review of impacts on water quality. To meet this need, Commission staff is working with DEP to develop a systematic approach that more accurately reflects the current level of knowledge about the relationship between land use and lake water quality. Additional rule-making changes will be necessary to implement this approach when it has been finalized.

Understanding of the impacts of clearing and development activities on water quality and riparian habitat has increased dramatically in recent years. In keeping with this improved understanding, IF&W and the Lakes Division of DEP have recommended stronger standards to minimize the impacts of these activi-

ties on water quality and riparian habitat. In response to these recommendations, the Board of Environmental Protection has adopted new standards governing minimum shore frontage, building setback, and clearing for development which will be applied to shoreland in organized towns. To maintain consistent environmental policies throughout the state, the Commission has enacted comparable standards in its jurisdiction.

## IV. Policy and Implementation Measures

The Land Use Regulation Commission seeks a balanced and environmentally sound approach to lake conservation and development that:

1. Conserves important lake-related natural resource values;
2. Protects water quality;
3. Accommodates reasonable shoreland development and harvest of timber;
4. Provides a diversity of public recreation opportunities; and
5. Encourages continued use of the unorganized territories for the principal purposes of fiber and food production, non-intensive outdoor recreation, and fisheries and wildlife habitat.

To meet these goals, the Commission will undertake the lake management program outlined below as part of its overall commitment to guide development and resource conservation on the shorelines of the more than 3,000 lakes and ponds in Maine's unorganized areas.

### A. Policy Guidance

The Commission will seek a balanced approach to shoreland development and conservation, one which recognizes public and private needs, supports the integrity of large forest holdings, and provides opportunities for creative, non-traditional shoreland development and conservation. The Commission proposes to regulate development based on lake-related natural features and values identified in the Wildlands Lake Assessment, guiding development toward those lakes or lake areas best suited to absorb new development, while restricting use of certain high value lakes. As a general planning guideline, the Commission will seek to ensure that development on lakes will remain below an average of one dwelling unit per 400 feet of shore frontage, and one dwelling unit per ten acres of lake surface area. These guidelines are designed to preserve the natural character of lakes in Maine's unorganized territories and to prevent conflicts between incompatible uses.

### B. Review Criteria for Shoreland Permits

The Commission reviews all applications to determine whether they meet statutory criteria regarding technical and financial capability, traffic and circulation, soils, and environmental fit. Of these four decision criteria, "environmental fit" is often the most difficult to assess. In order to increase predictability regarding the assessment of environmental fit, the Commission has identified the following seven areas which it will review as a guide for determining whether adequate provision has been made for fitting subdivisions and commercial, industrial, and other non-residential structures on lakes harmoniously into the existing natural environment. The same review will be applied to rezonings that precede such proposals on lakes.

Natural and cultural resource values: The Commission will utilize the findings of the Wildland Lakes Assessment and other information sources in evaluating the merits of lake-related development. The Commission will, at a minimum, specifically consider all natural resource values that received a rating of either "significant" or "outstanding" in the Assessment, and will look for a demonstration that these values will be maintained.

Water quality: The Commission will give specific consideration to the effect that a proposed development will have on lake water quality. For proposed development on lakes, the Commission will require a finding regarding the probable effect of the proposed action on lake water quality. In those instances where it is determined that an unacceptable increase in phosphorus concentration may occur, the applicant will be required to take additional measures to protect lake water quality. If unacceptable water quality degradation will result regardless of additional measures, the Commission will deny the application.

Independent of its review of specific proposals, the Commission will initiate actions aimed at refining its approach to evaluating lake water quality. This will include updating its approach to identification of water quality limiting lakes and switching to a one part per billion change in phosphorus concentration as an indicator of unacceptable water quality degradation, consistent with DEP's policy for the rest of the state.

Traditional uses: The Commission will consider the effect of lake-related development proposals on traditional uses, including non-intensive public recreation, sporting camp operations, timber harvesting, and agriculture, and will seek to ensure that such proposals do not have an undue adverse effect on these uses.

Regional diversity: The Commission will consider lake-related development proposals in a regional context. The objective will be to determine the effect of substantial land use changes on the diversity of lake-related uses afforded in any region of the jurisdiction. The Commission will make this determination based on a summary of existing lake shoreland uses in the region of the State where the proposed development will be located. The region is considered to be either the township in which the development will be located and the eight townships which abut that township, or, all townships abutting the lake in question, whichever is larger.

Natural character: The Commission will seek to maintain the natural character of lakes by encouraging: visual screening of larger developments and non-conforming structures; consolidated use of recreation facilities such as boat docks and access ramps; and provisions for long-term protection of undeveloped shoreland as part of subdivisions and commercial, industrial, and other non-residential proposals.

Independent of its review of specific proposals, the Commission will adopt stronger shore frontage, setback, and clearing standards in order to maintain the natural character of lake shorelines in the jurisdiction.

Lake management goals: In reviewing development proposals on or near lakes which fall into one of the Commission's seven lake management classifications, the Commission will seek to ensure that the proposed activity is consistent with the stated management intent for that class of lake.

Landowner equity: In certain instances, the amount of future development along a given lake's shoreline may need to be restricted due to water quality or other limitations. This can potentially cause an equity problem in that a landowner not wishing to develop his or her land in the short term could be precluded from developing at a later date due to heavy development on other parcels.

A landowner should not be penalized for voluntarily foregoing early development on lakes where development is otherwise allowed. In cases where future development may be restricted, each landowner should be allotted a percentage of allowable future development proportionate to the extent of his or her ownership. Where a landowner proposes to exceed this proportion, development rights should be acquired from other landowners.

### C. Lake Concept Plans

The Commission establishes the "lake concept plan" as a flexible alternative to traditional shoreland regulation, designed to accomplish both public and private objectives. Lake concept plans are landowner-created, long-range plans for the development and conservation of a large block of shoreland on a lake or group of lakes. The plan is a clarification of long-term landowner intent that indicates, in a general way, the areas where development is to be focused, the relative density of proposed development, and the means by which significant natural and recreational resources are to be protected. A concept plan does not require the detailed technical information associated with a site-specific development plan and does not take the place of such plans.

A lake concept plan can be prepared for a lake, a portion of a lake, or a group of lakes. The plan is initiated by the landowner or landowners and must be approved by the Commission.

The goal of concept planning is to encourage long-range planning based on resource characteristics and suitability as an alternative to haphazard, incremental development. The planning process necessary to prepare a plan encourages landowners to chart the future of their lake shorelands in a manner that is thoughtful and forward-looking. The landowner gains from the insight obtained in preparing the plan, from expanded flexibility in making land management decisions, and from increased predictability regarding Commission actions. The public gains from the improved planning that results from comprehensive evaluation of lake-related recreational and natural resources, from provisions for the long-term protection of resources, from greater knowledge of future development patterns, and from the increased predictability of the development review process.

While concept plans are voluntary, initiated and prepared by the landowner, once approved by the Commission, they are binding. The Commission encourages the use of concept plans by its commitment to expedite the permitting process for approved plans and to consider adjusting certain standards, such as the adjacency criterion, provided any such relaxation is matched by comparable conservation measures. Concept plans may not be used to relax requirements associated with Management Class 1 or Class 6 lakes. A concept plan may be used to seek a variation of the density standard for Class 2 lakes. Such variation will be granted only where it can be demonstrated by clear and convincing evidence that the plan is fully protective of the lake's special values and is consistent with the Commission's management intent for the lake.

#### Basic requirements

A concept plan must be responsive to the Commission's policy guidelines for management of lakes in Maine's unorganized areas, give consideration to natural and cultural values identified in the Wildland Lakes Assessment, and be responsive to the Commission's intent to protect those lakes identified in the Maine Wildland Lakes Assessment as warranting special management consideration.

In general, a plan should identify: 1) all areas where new, lake-related development is to be located; 2) resource values or shoreland areas that are to be protected; 3) mechanisms that will be used to conserve important resources or areas; and 4) the life span of the plan.

The emphasis and level of detail of a plan may vary depending on whether the plan is proposed for a single lake, a cluster of lakes, or an entire large ownership. At the option of the plan preparer, a detailed description of one or more development proposals may be submitted as a component of the plan.

#### Public input

Plan preparers are encouraged to provide avenues for interested parties to offer input during the development of the plan. The Commission will provide opportunity for public review of proposed plans. Notice that the Commission has received a proposal for a concept plan will be given to interested parties including affected landowners and a public review and comment period will be established. Upon request by five or more people, or when desired by the Commission, a public hearing will be held.

#### Plan approval

Concept plans will be implemented through the Resource Plan Protection Subdistrict (P-RP). In order to approve a concept plan, the Commission must find that the proposed plan conforms with the Commission's lake policies and lake program guidelines, is feasible, and is compatible with other public and private interests. It must also find that the plan strikes a reasonable and publicly beneficial balance between development and conservation of lake resources, and that, taken as a whole, the plan is at least as protective of the natural environment as the development, management, and protection subdistricts which it affects.

When a plan has been approved, the concept plan will be incorporated into the Commission's regulatory framework through appropriate changes to existing zoning. To accomplish the comprehensive planning objective of concept plans, the width of zones should generally be designed to encompass all lake-related development planned for the area over the life of the concept plan, or 500 feet, whichever is more.

#### Plan amendment and termination

A time span for each plan will be established. Ten years will be the minimum period, but concept plans of less than twenty years duration will be discouraged if such plans propose significant deviations from existing standards. A plan may be extended beyond the designated time period upon mutual agreement of the landowner(s) and the Commission.

To adapt to changing circumstances, plans can be amended or terminated at any time subject to mutual agreement between the landowner(s) and the Commission and following public notice of the proposed Amendment. While proposals for amendment or termination may be initiated by either party, the Commission will be conservative in exercising this option. To ensure good planning, proposals for lake-related development proximate to a lake covered by a concept plan should be pursued through an Amendment to the concept plan. Amendments must be consistent with the intent of the original plan.

To maximize predictability, the plan shall stipulate all conditions associated with termination of the plan, such as the status of any development that was approved as part of the plan but was not initiated during the life of the plan. Upon the plan's termination, the Commission will, in conformity with its comprehensive plan, statutes, and standards, designate appropriate zoning which is consistent with zoning of equivalent areas. Any development or relaxation of regulations which took place as part of a concept plan cannot be used to justify subsequent rezonings, meet adjacency requirements, or otherwise alter zoning at any time in the future.

In the event that a plan is terminated, all transactions initiated as a component of the plan, such as the granting of conservation easements or creation of restrictive covenants on subdivided lands, will continue to apply to the extent that they are covered by legal contract or deeded covenants.

### D. Lake Management Classes

The Commission recognizes six specific lake classifications for special planning and management purposes. Lakes are classified based on natural and other resource values and land use characteristics identified in the Wildland Lakes Assessment. Specific descriptions of the criteria for each classification, as well as lists of the lakes in Management Classes 1 through 6, can be found below. Those lakes which are not included in one of these six classes are considered to be Management Class 7.

Management Class 1 lakes are high value, least accessible, undeveloped lakes. It is the Commission's goal to preserve the best examples of these pristine lakes in their natural state by prohibiting development within 1/4 mile of their shores and restricting permanent vehicular access to these lakes. Existing timber harvesting standards are currently considered sufficient to protect the values associated with these lakes from forest management activities. A number of lakes that meet the criteria for Management Class 1 are not designated as such because they are already protected through remote pond zoning. These lakes are identified below.

Management Class 2 lakes are high value, accessible, undeveloped lakes. The Commission intends to conserve the special values of these lakes by significantly restricting the density and intensity of development to one development unit per mile of shoreline. These restrictions will be applied to the area within 500 feet of the lakeshore to enable the Commission to regulate back lot development which could affect the lake's special values and is consistent with the management intent of the lake. Variation of density requirements may only be sought as part of a concept plan which is demonstrated by clear and convincing evidence to be fully protective of the special values associated with the lake.

Management Class 3 lakes are those lakes identified in the Appendix considered by the Commission to be potentially suitable for development based on available information on water quality, access, conflicting uses, shoreland availability, water level fluctuation, location, regional considerations, and special planning needs. Soils were not considered in the designation of these lakes due to lack of information, and may affect the appropriateness of this designation for some lakes. The Commission supports additional responsible development around Class 3 lakes, yet will take care to ensure that their significant natural resource values are conserved. The Commission will waive the adjacency criterion for development proposals on these lakes provided it can be demonstrated to its satisfaction by clear and convincing evidence that the lake has no existing or potential water quality problems and that soils are suitable for development. This waiver is strictly limited to shoreland, and proximate areas may not subsequently use shoreland development on Class 3 lakes to meet the adjacency criterion.

Management Class 4 lakes are high value, developed lakes. The Commission's goal for these lakes is to allow a reasonable level of residential and recreational development while conserving natural resource values and maintaining undeveloped shoreland areas. The Commission will take special care in evaluating and regulating new subdivisions proposed on these lakes and will require cluster development to protect natural values except where clearly inappropriate due to site characteristics.

Management Class 5 consists of heavily developed lakes. The Commission seeks to maintain natural qualities associated with these lakes, enhance scenic values, and retain some undeveloped shoreline by requiring cluster development on these lakes except where clearly inappropriate due to site characteristics. The Commission has identified lakes approaching heavily developed status and will pursue similar goals on the lakes.

Management Class 6 lakes are remote ponds — inaccessible, undeveloped lakes with coldwater game fisheries. The Commission intends to continue to prohibit development within 1/2 mile of these ponds to protect the primitive recreational experience and coldwater lake fisheries in remote settings.

Management Class 7 consists of all lakes not otherwise classified, including many lakes which have multiple outstanding or significant resource values identified in the Wildland Lakes Assessment. The Commission will manage these lakes for multiple use, including resource conservation, recreation, and timber production, giving specific consideration to identified resource values when evaluating the merits of lake-related rezoning and permit applications. It is the Commission's intention that the majority of these lakes remain in Management Class 7 and be managed under applicable requirements.

The Commission will consider reclassification of lakes within certain prescribed limitations. In cases where clear evidence of factual error indicates that a lake was misclassified, it will be reclassified to the appropriate class. Notwithstanding the above, changes in land use characteristics that occur after November 17, 1988, including without limitation, vehicle access and residential development will not be considered in future reclassifications. It is the Commission's intent to hold public hearings on all rule-making proposals involving proposed reclassifications.

The Commission has found that, in a few special cases, Management Class 3 criteria are not sufficiently refined for properly managing large lakes that are appropriate for a mix of conservation and development and which are or are likely to be under intensive development pressure. Moosehead Lake and the Rangeley Lakes, specifically Azizcohos, Mooselookmeguntic, and Upper and Lower Richardson, are considered to be such special cases. These lakes will be placed in Management Class 7 until comprehensive plans are developed to more specifically guide future growth in these areas. The Commission envisions that such plans will be substantially complete within 5 years.

Some lakes classified in Management Classes 1 through 6 abut other jurisdictions - either organized towns or Canada. The Commission should work cooperatively with other jurisdictions fronting on these lakes and encourage them to develop programs that are compatible with and comparable to LURC's lake management program. If comparable regulations are not implemented by abutting jurisdictions within a reasonable period of time, the Commission may choose to reconsider affected lakes' classification.

#### **E. Other Public and Private Initiatives**

The Commission encourages state agencies, landowners, and others to undertake actions that are consistent with and supportive of the Commission's lake management goals. Toward this end, the Commission: encourages interagency cooperation and coordination that furthers its lake management program; encourages non-regulatory measures that promote long-term conservation of important lake areas; supports measures to provide incentives for landowner conservation of important natural resources such as lake shorelands; and, encourages responsible shoreland use through campowner education programs.

### **V. Periodic Update of Lake Management Program**

It is the Commission's intention that its lake management program be updated periodically to ensure that it responds to changing needs in a comprehensive manner. To maintain consistency of policy, this review and update should occur concurrent with the periodic revision of the Comprehensive Plan and as needed to address changing circumstances and new trends.